

Kristina D. Lawson, J.D., Chair
Panel B


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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of the Revoked License of:

SARATH CHULA WITANA,

Petitioner.

Case No. 800-2016-022258

OAH No. 2017110374

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Riverside, California, on March 14, 2018.

Peter R. Osinoff, Attorney at Law, Bonne Bridges Mueller O'Keefe & Nichols, represented Sarath Chula Witana, petitioner, who was present during the hearing.

Tessa L. Heunis, Deputy Attorney General, appeared on behalf of the people of the State of California.

The record was initially closed on March 14, 2018. On March 21, 2018, on the Administrative Law Judge's motion, the record was reopened, and the Administrative Law Judge disclosed that in 2012, when he worked at the Attorney General's Office, he had a discussion regarding petitioner's case with the Deputy Attorney General who prosecuted the disciplinary action against petitioner. After this disclosure was made on the record to the parties, the parties were given the opportunity to be heard. The parties did not object to the Administrative Law Judge deciding this matter. The record was then closed, and the matter submitted on March 21, 2018.

SUMMARY

Effective February 28, 2013, the board revoked petitioner's license to practice medicine for the following reasons: He engaged in sexual misconduct with a patient, committed gross and repeated negligent acts in the treatment of that patient, failed to comply with laws governing the prescription of medications, failed to maintain adequate and accurate medical records, falsified medical records, testified falsely that he terminated the doctor/patient relationship and referred the patient to a psychiatrist, and because he was

convicted of a crime substantially related to the qualifications, functions and duties of a physician.

Petitioner presented clear and convincing evidence, based on the record as a whole, that he is sufficiently rehabilitated and he can safely return to the practice of medicine with specific terms and conditions to ensure public protection.

FACTUAL FINDINGS

License History

1. On January 8, 1992, the Medical Board, Department of Consumer Affairs, State of California (board), issued Physician's and Surgeon's Certificate No. A 50338 to Sarath Chula Witana (petitioner).

On September 1, 2010, the board's Executive Officer filed Accusation, Case No. 09-Case No. 09-2010-204208, entitled *In the Matter of the Accusation Against Sarath Chula Witana, M.D.*, against petitioner. This action arose from petitioner's sexual relationship with his patient, L.S., on December 20, 2009, at his office. On June 21, 2010, in the case entitled *People of the State of California v. Sarath Witana*, Case No. RIM10007869, the Riverside County District Attorney filed a misdemeanor complaint charging that on December 20, 2009, petitioner engaged in acts of sexual intercourse with a patient, in violation of Penal Code section 729, subdivision (a), sexual exploitation of a patient. On September 28, 2011, by way of jury verdict, petitioner was convicted of violating Section 729, subdivision (a).

On February 14, 2012, the board's executive officer filed the First Amended Accusation. After a three-day hearing, the board adopted the Proposed Decision of Administrative Law Judge Vallera Johnson, effective February 28, 2013, and revoked petitioner's license.

The Decision

2. In its decision the board found the following causes of discipline as bases to revoke petitioner's license:

- Petitioner engaged in sexual misconduct with his patient L.S., in violation of Section 726, when petitioner had sex with L.S. twice in his office on December 20, 2009. At the time, petitioner was treating her as her primary care doctor, and he said he also counseled her as a friend of both L.S. and her husband, who was an orthopedic resident he knew. L.S. was experiencing severe symptoms of depression and anxiety, L.S. was having marital problems, and she had physical health concerns. The board rejected petitioner's claim that he had terminated the patient doctor relationship on December 14, 2009, before he had sex with her on December 20, 2009.

- Petitioner committed the following acts of gross negligence and repeated negligent acts in his care and treatment of L.S.: He failed to adequately address L.S.'s issues of anxiety attacks and suicidal ideation in the treatment plan for L.S.; he failed to develop and document an assessment and treatment plan relating to L.S.'s abnormal responses to psychometric testing; and he failed to document the reason he prescribed two different sources of hormones to L.S., including Estratest, a hormone which contains a low dose of testosterone with a demonstrated ability to help women with decreased libido, to a 27-year-old premenopausal woman.
- In addition, petitioner committed gross negligence when he had sexual intercourse with L.S. on December 20, 2009. On that date, the doctor-patient relationship had not been terminated, petitioner had not referred L.S. to another physician, and he was also aware that L.S. was vulnerable and psychologically unstable.
- Petitioner violated statutes or regulations regulating drugs in violation of Business and Professions Code section 2338 when he wrote a prescription for Klonopin, a medication for anxiety and depression, for L.S. on Sunday, December 20, 2009, that falsely represented the date of the prescription as December 21, 2009, when in fact he wrote the prescription on December 20, 2009, in violation of Health and Safety Code sections 11505, 11157 and 11173.
- Petitioner knowingly made or signed a certificate or other document directly or indirectly related to the practice of medicine that falsely represented the existence or nonexistence of a state of facts because he falsified the following records in L.S.'s chart in violation of Business and Professions Code section 2661: a doctor-patient termination letter, dated December 14, 2009; the psychiatry referral, dated December 14, 2009; and a note petitioner signed indicating the "termination" letter was mailed to patient L.S. on December 14, 2009. In response to a September 19, 2011, subpoena from the Orange County District Attorney's Office, petitioner had supplied these materials plus a note petitioner signed indicating the termination letter was mailed to patient L.S. on December 14, 2009.
- In reaching this conclusion, the board rejected petitioner's testimony that he panicked and supplied L.S.'s electronic records and not her paper records to the board in response to its subpoena on March 13, 2010. The board noted that petitioner's chart note for December 14, 2009, was more extensive than the chart notes for any other day and advised L.S. to return for a follow-up appointment in 20 days. The board reasoned that if petitioner terminated the physician-patient relationship on that date, logically, if this had been a computer-generated statement, petitioner would have elaborated on the termination in the computer-generated statement. Moreover, the board added, had the termination letter existed on March 13, 2010, petitioner's computer-generated termination letter would have been printed out and produced with the certified medical records petitioner provided to the board.

- Petitioner failed to maintain adequate and accurate records in violation of Business and Professions Code section 2266 when he failed to document L.S.'s office visit on December 20, 2009, and his prescription of Klonopin on that date, in her chart. He also failed to maintain adequate and accurate records regarding L.S.'s care and treatment on other occasions.
- Pursuant to Business and Professions Code section 2236, petitioner was convicted of a crime substantially related to the functions, qualifications, and duties of a physician and surgeon due to his September 28, 2011, misdemeanor conviction after a jury trial for violating Business and Professions Code section 729, subdivision (a), sexual exploitation of a patient, in the matter entitled *People of the State of California v. Sarath Witana*, Riverside Superior Court, Case No. RIM10007869.
- Petitioner violated Business and Professions Code section 2234, subdivision (e), due to his false testimony at his criminal trial. At that trial, on September 27 and 28, 2011, he falsely testified that on December 14, 2009, he wrote a psychiatry consult on his prescription pad and handed the psychiatry consult to L.S. On September 28, 2011, petitioner falsely testified that, on December 14, 2009, he wrote a doctor-patient termination letter and mailed the letter to patient L.S., and on September 28, 2011, petitioner falsely testified that on December 14, 2009, he discussed terminating the doctor-patient relationship with L.S. The board found that on December 14, 2009, he did not write a psychiatry consult on his prescription pad and hand it to L.S.; on December 14, 2009, he did not write a doctor-patient termination letter and mail that letter to L.S.; petitioner did not discuss terminating the doctor-patient relationship with L.S.; and petitioner did not terminate the doctor-patient relationship with L.S. prior to having sex with her.

3. The board rejected petitioner's testimony that L.S. was not a patient on December 20, 2009, and he terminated the physician-patient relationship on December 14, 2009, before he had sexual relations with her. The board found that with the exception of petitioner's testimony, there was no evidence from any trustworthy source that petitioner terminated the physician-patient relationship and the credible evidence indicated the contrary.

In this regard, the board accepted L.S.'s testimony over petitioner's testimony. L.S. testified that petitioner did not discuss terminating the physician-patient relationship with her, that she did not receive a referral to another doctor or psychiatrist, and that she did not receive a letter from petitioner terminating the physician/patient relationship. Moreover, L.S. believed that the doctor-patient relationship existed when she went to his office on December 20, 2009. The board found L.S.'s testimony was corroborated by the fact that neither the "termination letter" petitioner purportedly mailed to L.S., nor the "psychiatry referral" he purportedly gave her were among the certified medical records petitioner provided to the Board on March 13, 2010. In addition, according to L.S.'s December 14, 2009, medical record chart note, petitioner stated that L.S. should return in four weeks or sooner if her

symptoms did not improve. This note appeared to be a standard computer-generated note in L.S.'s medical record. Also, after petitioner engaged in sexual relations with L.S. on December 20, 2009, he postdated a prescription for L.S. for Klonopin, a medication that he had prescribed for L.S. throughout their doctor-patient relationship for anxiety and depression.

4. Considering petitioner's multiple violations of the Medical Practice Act and the need for public protection, the board determined that the appropriate level of discipline was revocation. In reaching this conclusion, the board found petitioner's misconduct serious and troubling: Petitioner took advantage of L.S.'s vulnerable emotional state, then attempted to cover-up his misconduct by fabricating records and testifying falsely at his criminal trial. The board further found that petitioner did not take full responsibility for his conduct or present evidence that he was sufficiently rehabilitated. He blamed L.S., and he did not obtain counseling or take an ethics course. In its Decision, the board stated the following:

As her physician, Respondent was clearly aware of her diagnoses of depression, anxiety disorder and bipolar disorder; in addition, she had attempted suicide and continued to have suicidal thoughts; on December 14, 2009, based on the results of a battery of tests that he administered, he confirmed that she had severe depression, severe anhedonia and was at high risk of suicide; participating in daily activities was extremely difficult due to her mental health condition. Once charged with a crime and investigated by the Medical Board, Respondent's defense included the presentation of false medical records and dishonest testimony.

[¶] . . . [¶]

There is no evidence that Respondent has received counseling or has taken an ethics course. Of grave concern is the fact that Respondent blames patient L.S. and asserts that she willingly participated in the sexual relationship, despite her mental condition. He contends that he did not intend to have sex with her.

Respondent had sex with the patient when his office was not open for the care and treatment of other patients. There was no one present in the office but Respondent and patient L.S. when the massage began. Given the foregoing facts and the evidence of his dishonesty, simply requiring that Respondent have a chaperone present during his treatment of female patients would not be adequate to protect the public or to prevent Respondent from having sex with another female patient. Considering the facts, the violations and the foregoing, it would be contrary to

the public interest to allow Respondent to retain his license at this time.

Petition for Reinstatement

5. On March 15, 2016, petitioner submitted a Petition for Penalty Relief to have his license restored. He submitted letters of support from a number of individuals including doctors who testified in this proceeding. In addition, he submitted proof of continuing education courses he has taken to maintain his medical knowledge, and a detailed narrative statement.

Petitioner's Testimony

6. Petitioner obtained his medical degree from the University of Sri Lanka, Colombo Campus, in Sri Lanka in 1982. Between 1982 and 1989, he practiced medicine in Sri Lanka. Between 1990 and 1993, petitioner completed his residency in internal medicine at King Drew Hospital, he was Chief Resident in the Internal Medicine Department at King Drew and was an Assistant Clinical Professor at King Drew in 1994. He obtained additional training in cardiology between 1993 and 1994 and was board certified in internal medicine until his license was revoked. Since the revocation of his license, petitioner has operated an electronics medical records consulting company for doctors.

Petitioner's testimony is summarized as follows: Petitioner now has an understanding what he did was "very wrong" and a "criminal act" and he is sorry for his behavior. He noted that until now he was not "forthcoming" in acknowledging his mistakes. Petitioner said he should have admitted that L.S. was his patient, his judgment was wrong that he sought to terminate the doctor/patient relationship on December 14, 2009, by the letter he sent L.S., and he violated ethical laws governing the practice of medicine and the Hippocratic Oath. He takes full responsibility for his misconduct for meeting L.S. outside of office hours, counseling her when he was not a psychiatrist, and engaging in sexual misconduct with L.S.

Petitioner now no longer blames L.S. and said he was wrong at the hearing before ALJ Johnson to blame L.S. for being "flirtatious" and voluntarily having sex with him. He said that she was sick at the time and in need of medical care and he was very wrong to blame her. Petitioner now knows his conduct harmed L.S. He aggravated her anxiety, causing her to lose trust in doctors with the result that she may be reluctant to seek out medical treatment when she needs treatment, and he put her in harm's way.

Petitioner denied, however, that he sought to terminate the doctor patient relationship on December 14, 2009, to have sex with her on December 20, 2009. He continued to assert that he mailed a letter to her on December 14, 2009, and referred her to a psychiatrist, as the board found in its Decision. With this noted, petitioner said he now knows that he did not terminate the doctor patient relationship on December 14, 2009, based on mailing her a letter that day. Petitioner said that, considering the serious nature of her mental illness, including

the fact that she was a victim of rape when she was 18, he should have consulted with a psychiatrist to ensure that her care was transferred to another doctor and he was responsible to treat her during this transfer period.

7. Petitioner made efforts at the hearing to explain his behavior. He said that on December 20, 2009, his “amygdala” took over him and, as he put it, he had an “amygdala hijack.” Petitioner allowed this to happen because he lowered the boundaries between himself and L.S. by giving her money, seeking to counsel her because of the marital problems she was having and meeting her when his office was closed. Petitioner said that agreeing to meet L.S. when the office was closed was an “extreme boundary violation.” He further explained the stress he was under at the time contributed to his boundary lowering. At that time, he was struggling emotionally to cope with his father’s death and his wife’s breast cancer.

Petitioner stressed that he will not engage in such behavior again. He explained that the pain and suffering he has caused is “the greatest pillar” to prevent him from engaging in such behavior again and engaging in “boundary mixing.” To help ensure he does not engage in boundary mixing again, since the loss of his license, petitioner has undertaken to educate himself on the rules governing boundaries in the care and treatment of patients and has taken professional boundary courses, including seminars with other boundary transgressors so that they can learn from each other’s mistakes. In this regard, petitioner submitted Continuing Medical Education (CME) certificates from the following courses he has taken: a 12 credit hour course entitled “Professional Boundaries and Ethics, Maintenance and Accountability Seminars” on December 3, 2015; a 24 credit hour course entitled “PBI Professional Boundaries Course” on September 11 to 13, 2015; a 16 credit hour course entitled “Professional Boundaries and Boundary Violations: A Primer” on October 20, 2015, and a comprehensive ethics course administered by the Institute for Medical Quality in San Francisco, the IMQ Professionalism Course, for 20 credit hours on August 22 and 23, 2015.

8. Based on these courses and also based on articles he read on “Boundary Protection Studies,” petitioner prepared a “Boundary Protection Plan” that he intends to follow should his license be restored. Under this plan, petitioner would use trained chaperones during examinations; document in patient records that chaperones were present during examinations; have available peer monitors, including Yogendra Patel, M.D., Ananda Nimalasuriya (“Nim”), M.D. or Syam P Kunam, M.D.; maintain accurate medical records; conduct patient visits during office hours; maintain work-life balance; and undergo psychological counseling as recommended, among other goals he intends to follow. The Boundary Protection Plan petitioner developed was a thoughtful and detailed document.

9. After the loss of his license, he has also sought counseling to gain insight into the factors that contributed to his behavior. Starting on August 22, 2013, petitioner underwent psychotherapy with Elisee Bastien, Psy.D., and Syam Kunam, M.D., a psychiatrist. Petitioner was diagnosed with Adjustment Disorder with disturbance of conduct. His treatment with Dr. Bastien continued until January 17, 2014. At this session, petitioner reported that he reached “the maximum benefits” he could reach through therapy.

Thereafter, he saw Dr. Kunam on these occasions: July 12, 2015, January 1, 2017, June 3, 2017, and March 8, 2018. Throughout his therapy, petitioner reported minimal symptoms and his Global Assessment of Functioning (GAF) scores ranged from 56 to 90.¹ His GAF scores reflected moderate to mild psychiatric symptoms. Petitioner's treatment with these two providers was not extensive.

In his narrative statement, he wrote that his therapy focused on "elimination of denial," enhancement of professional boundary skills, identifying risk factors and relapse triggers, the appropriate doctor-patient relationship, and stress management. Petitioner said he discussed the risk factors behind his behavior with Dr. Bastien, including his "excessive hours as a sole practitioner and [being] on call for my patients," his administrative responsibilities, involvement in numerous committees, financial pressures, the loss of his father, his wife's breast cancer and his inability to achieve stress reduction. He emphasized in his narrative that these factors were not excuses for his behavior. Petitioner said that if stressors arise in the future, he would consult with Dr. Nim, who is like a father to him, and with Dr. Patel.

10. To show his fitness to return to practice in the event his license is restored, petitioner participated in an assessment of his clinical and medical skills on July 25 to 29, 2016, through the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine. The PACE Program's conclusions regarding petitioner's fitness for duty are contained in a detailed 14-page report dated October 27, 2016, signed by William Norcross, M.D., and Patricia Smith, M.P.H. No one testified from the PACE Program in this hearing and the report is considered only to show that the PACE Program assessed his clinical and medical skills.

As part of the assessment of his clinical and medical skills, Kai McDonald, M.D., a psychiatrist and clinical professor at the School of Medicine, performed a fitness for duty evaluation of petitioner on July 25, 2016. Dr. McDonald reviewed a number of materials including a root cause analysis petitioner provided him and a number of psychiatric self-report inventories. Dr. McDonald prepared a detailed 14-page report dated August 13, 2016, with his findings. Dr. McDonald did not testify in this hearing and his report is considered only to show that petitioner underwent a fitness for duty examination through the PACE Program with Dr. McDonald.

11. Petitioner has, in addition, sought to maintain and update his medical knowledge in the event his license is restored. He has taken over 120 hours of CME credits in internal medicine and other topics, read articles in medical journals, and reviewed rules and regulations governing the professional code of ethics, standards of practice, and guidelines. Petitioner submitted certificates that show he completed these courses between July 2015 and October 5, 2017.

¹ The GAF is a numeric scale used by mental health clinicians and physicians to rate subjectively the social, occupational, and psychological functioning of an individual, e.g., how well one is meeting various problems-in-living.

As part of his efforts to rehabilitate himself since the loss of his license, petitioner has performed the following volunteer activities: He has given lectures at Vision Home Health and Hospice and Access Home Health Nursing to staff and other professionals on various topics including helping terminally ill patients decrease pain, anxiety, and fear; given lectures at the Sambuddhaloka Vihara Buddhist Temple on medical topics; helped organize relief aid for victims after the 2015 earthquake in Nepal; and is a volunteer for post-tsunami survival projects in Sri Lanka.

12. Petitioner also stressed, as part of his personal rehabilitation process, that he has sought his wife's forgiveness and improved his relationship with her. He and his wife went to India and renewed their wedding vows, and he said he promised to never cross a boundary again. He added that he wrote apology letters to all of his family members.

13. On cross-examination, petitioner was asked about comments he made to Dr. McDonald on July 25, 2016, regarding L.S. To Dr. McDonald, he described L.S. as "a beautiful woman . . . a little flirtatious, and [she] liked to give hugs. . . ." Petitioner said that he now does not regard her as "flirtatious." He said at the time he believed she was partly to blame and a little manipulative and he now knows he was wrong to say these things about L.S. to Dr. McDonald. Petitioner added that after he saw Dr. McDonald he learned in "a much more deep way" that he was to blame and he should not have said these things about L.S. to Dr. McDonald. He quickly noted that he takes full responsibility for his "egregious conduct."

Also on cross-examination, petitioner was asked whether he disagrees with the board's conclusion that he did not send a "termination" letter on December 14, 2009, to L.S. and he did not give her a referral to a psychiatrist on this same date. He disagrees with the board's decision in these respects. He repeated that he sent L.S. the termination letter and gave her a referral to a psychiatrist. But, petitioner recognized that by taking these steps he did not correctly terminate the doctor-patient relationship and he did not correctly refer L.S. to another doctor.

Petitioner also disagreed with the board's conclusion that he violated statutes or regulations regulating drugs in violation of Section 2338 when he wrote a prescription for Klonopin for L.S. on Sunday, December 20, 2009, that falsely represented the date of the prescription as December 21, 2009. He explained that he wrote the prescription with the December 21, 2009, date because he wanted L.S. to try to get the prescription from her psychiatrist before she filled the prescription from him. On this point, the board found his explanation was illogical. It continues to be illogical. Even if petitioner wanted L.S. to contact her psychiatrist before filling the prescription, it makes no sense that petitioner needed to write the date December 21, 2009, on the prescription, as opposed to writing December 20, 2009.

14. Petitioner's testimony was mostly credible. Petitioner credibly took responsibility for engaging in sexual misconduct and credibly testified that, at least since he met Dr. McDonald on July 25, 2016, he no longer blamed L.S. for the sexual misconduct for

which he was disciplined. He offered meaningful insight into his behavior and credibly testified that he will not engage in sexual misconduct again.

With this noted, petitioner did not accept responsibility for other conduct that the board found: specifically, he disputed the board's conclusions that he lied at his criminal trial that he mailed a termination letter to L.S. on December 14, 2009, and referred her to a psychiatrist that same date, and he falsified L.S.'s medical records to reflect that he took these actions.

To have his license reinstated, petitioner is not required to accept the board's conclusions by making a false act of contrition. (*Hall v. Committee of State Bar Examiners* (1979) 25 Cal.3d 730, 744-745.) In determining whether petitioner's contrition is false, it is necessary to evaluate whether, as the court found in *Hall*, petitioner has a good faith belief in his innocence. (*Id.* at pp. 743-744.) Here, it cannot be found that petitioner has a good faith belief in his innocence based on the board's findings. In its findings, the board rejected petitioner's testimony that he panicked in response to the board's subpoena and, as a result, failed to include paper records from L.S.'s medical chart, which included the termination letter and psychiatric referral. The board noted petitioner's December 14, 2009, chart note for L.S. was more extensive than the chart notes for any other day and petitioner advised L.S. to return for a follow-up appointment in 20 days. The board reasoned that if petitioner terminated the physician-patient relationship on that date, petitioner would have referenced the termination in the December 14, 2009, computer-generated record.

Also, the board accepted L.S.'s testimony that petitioner did not discuss terminating the physician-patient relationship with her, that she did not receive a referral to another doctor or psychiatrist, and that she did not receive a letter from petitioner terminating the physician/patient relationship. The board further found that L.S. believed that the doctor-patient relationship existed when she went to petitioner's office on December 20, 2009.

Thus, petitioner's failure to accept responsibility for his false testimony and conduct relating to falsifying L.S.'s medical records is considered a factor against granting his petition for reinstatement.

Petitioner also did not take responsibility for violating laws governing the prescribing of Klonopin to L.S. when he post-dated a prescription for the medication. His explanation that he post-dated the prescription so that L.S. would try to get the prescription from her psychiatrist before she filled the prescription from petitioner was illogical. His testimony in this regard constitutes an effort to rationalize his misconduct and is also considered a factor against granting his petition.

Testimony of Syam P. Kunam, M.D.

15. Syam P. Kunam, M.D., is a board certified psychiatrist at Inland Psychiatric Medical Group, where he is also the CEO, who treated petitioner along with Dr. Bastien. Dr. Kunam completed his medical education in India, and a residency in psychiatry at Henry

Ford Hospital in Detroit in 1990. He has been a practicing psychiatrist since 1990 and has held leadership positions at hospitals in Riverside and San Bernardino Counties, including serving as Chairman of the Department of Psychiatry at Redlands Community Hospital in Redlands from 1993 to 1995 and again from 1998 to 2003.

Dr. Kunam testified on petitioner's behalf and he prepared a report dated March 8, 2016, which was received into evidence. Dr. Kunam became petitioner's treating psychiatrist after Dr. Bastien passed away and he reviewed Dr. Bastien's records from August 22, 2013, to January 17, 2014. Dr. Kunam saw petitioner on July 12, 2015, where he documented that petitioner's medical license was suspended and he wanted to "appeal." Subsequently, he saw petitioner on June 3, 2017, and March 3, 2018, shortly before the hearing. These notes indicate that, aside from anxiety, petitioner displayed no psychiatric symptoms. According to the June 3, 2017, note, petitioner told Dr. Kunam that his medical license was "pending," referring to his petition for license reinstatement. According to the March 8, 2018, note, Dr. Kunam wrote the following (quoted without capitalization): "More introspective more remorseful aware of consequences of transgression recommend reissuance of license with probation and psychologist monthly for 1 year."

Dr. Kunam's treatment of petitioner is also documented in a January 1, 2017, document entitled "Physician Initial Evaluation." Dr. Kunam described this report as documenting his full assessment of petitioner on this date. It was not clear why this assessment was performed on January 1, 2017, when petitioner had been receiving treatment with Drs. Bastien and Kunam since 2013. In this document, petitioner described his chief complaint as the suspension of his medical license in 2013 due to the incident in 2009. Also in this document, petitioner was noted to have undergone "extensive therapy" with Dr. Bastien and he had taken professional boundary education courses including the PACE Program. Petitioner identified that he had few psychiatric symptoms. He stated that his feelings of guilt/worthlessness were mild to moderate and anxiety was mild. Dr. Kunam assessed petitioner with an adjustment disorder, mild, and advised him to return in six months for follow-up.

In his testimony Dr. Kunam acknowledged that petitioner did not undergo a lot of therapy with him. He saw him three or four times related to petitioner's petition for reinstatement. Dr. Kunam talked to petitioner about progress he was making, what he did, and what he would do if he gets his license back. Based on his review of Dr. Bastien's records and Dr. McDonald's report, Dr. Kunam concluded that petitioner now takes responsibility for his conduct and he does not believe that petitioner will engage in this behavior again. Dr. Kunam explained that the likelihood of petitioner engaging in such behavior is less due to what petitioner has lost and his realization that he was wrong.

Dr. Kunam acknowledged that petitioner did not always feel he was responsible for his behavior. Petitioner progressed to the point where he now is "very remorseful" and understands what he did was wrong after he took a lot of courses on personal boundaries. Initially, petitioner rationalized his behavior, and petitioner believed that L.S. consented to

the sexual relationship with him. Petitioner has now progressed to the point where he accepts that he was responsible for the boundary violation.

Dr. Kunam recommended that, should petitioner's license be reinstated, he treat with a psychologist monthly to identify "red flags" relating to potential boundary violations.

Dr. Kunam's testimony was credible and consistent with the evidence of record.

Testimony of Character Witnesses

16. The following individuals testified on petitioner's behalf as character witnesses: Ananda Nimalasuriya ("Nim"), M.D, José M. Limon, M.D., and Anoop Maheshwari, M.D. In addition to their testimony, these individuals submitted written statements which were received in evidence.

Dr. Nim has known petitioner for over 39 years. He was petitioner's teacher at the University of Colombo where petitioner was a medical student. Dr. Nim is board certified in endocrinology and internal medicine and a senior endocrinologist at Kaiser Permanente Medical Center in Riverside, where he works part-time since his recent retirement. He served as Assistant Clinical Professor of Medicine at the University of Southern California and the Chief of Endocrinology at Kaiser Permanente before his retirement.

Dr. Nim has been a mentor and, as petitioner stated, a father figure to petitioner throughout the years. After medical school, petitioner reconnected with Dr. Nim in 1989, and Dr. Nim helped petitioner get a position at King Drew when petitioner began practicing as a physician. Since that time, he and petitioner have met regularly. They belong to the same religious temple, the Sambuddhaloka Buddhist Vihara Temple.

Dr. Nim testified that petitioner told him about the incident with L.S. in March 2010. Dr. Nim said that petitioner now feels very remorseful about what happened, he was totally to blame, and is ashamed about his conduct. Petitioner has gained insight into the circumstances of his behavior and he has tremendous empathy for the victim and "feels very bad" for L.S. Dr. Nim said that the incident happened because of stresses in petitioner's life including that he was burnt out, had financial issues, and his wife had breast cancer. Dr. Nim said that petitioner's life was out of balance at the time. Petitioner gained these insights through discussions with his therapists and him.

Dr. Nim stated that he is very impressed with the comprehensive boundary protection plan petitioner developed. This plan includes petitioner's statement he intends to have a better work life balance and to seek help if he feels he is at risk of committing a boundary violation.

17. Dr. Limon has been practicing medicine for 30 years, is a member of the credentialing committee at San Geronio Memorial Hospital and has two medical offices.

He is board certified in internal medicine. Dr. Limon has known petitioner for 20 years both in professional and social capacities.

Petitioner told Dr. Limon about his conduct before his license was revoked because Dr. Limon was Medical Director of the group where petitioner worked. He is aware, thus, of petitioner's conduct. He said that petitioner is remorseful, has great shame about his behavior, and takes full responsibility for it. He said that petitioner has set out to educate himself regarding professional boundaries and has worked on his character. Dr. Limon said that petitioner now understands boundaries and how to cope to avoid this conduct from happening again.

Dr. Limon described petitioner as one of the five best internists he has encountered, and he would like to see him return to the practice of medicine in order to serve the needs of the community.

18. Dr. Maheshwari is a specialist in Pulmonary and Critical Care and has practiced medicine in Southern California since 1993. He has served as Chief of Staff at Vista Hospital in Riverside and is currently the Medical Director at Kindred Hospital in Riverside.

Dr. Maheshwari has known petitioner since 1994 as a colleague, and he and his family socialize with petitioner and his family. Since petitioner's license was revoked, Dr. Maheshwari hired petitioner to work part time helping him set up his office's electronic records system for Medicare.

Dr. Maheshwari learned about petitioner's misconduct before his license was revoked because, at the time, he was serving on the Executive Committee at Vista Hospital. Since that time, he has talked to petitioner about his misconduct, and petitioner told him he is very remorseful and was apologetic. Dr. Maheshwari has also seen that petitioner has taken courses to improve himself, participated in therapy, and educated himself on professional boundaries. Dr. Maheshwari said that he has seen a change in petitioner's character where he is now more religious and more spiritual.

Dr. Maheshwari was also impressed with petitioner's boundary protection plan and Dr. Maheshwari believes it will ensure that patients are protected.

Dr. Maheshwari described petitioner as an honest and caring person, and he does not believe that he will engage in such conduct again.

19. The testimony of petitioner's character witnesses was credible.

Character Letters

20. The following individuals wrote letters on petitioner's behalf: petitioner's wife, Chief Abbott Wathogala Saranasari, Joseph O. Nwokeabia, Edwin Navarro, Lilibeth

Navarro, Yogendra B. Patel, M.D., and Pastor Ted Slattery. These letters were admitted as administrative hearsay and supplement and explain petitioner's testimony and the testimony of Drs. Nim, Limon and Mahewshwari that petitioner is remorseful for his misconduct and has made serious efforts to learn from his misconduct to ensure that he does not transgress professional boundaries again.

In her letter dated March 7, 2016, Jayanti Witana, petitioner's wife, described her personal struggles, including recent surgery for breast cancer, from which she has just recovered. She stated that petitioner has promised her in writing that he will never break the marriage vow again, he will continue to follow his spiritual mentor, Abbot Saranasiri, and his professional mentor, Dr. Nim. Ms. Witana stated that she will be "his umbrella of his personal protection" so that he will never engage in a similar act. She mentioned that she is grateful that Dr. Patel stated he is willing to hire him in his practice and serve as a guide by becoming his professional mentor, in the event his license is restored. She believes that, based on her personal observations, petitioner is fully rehabilitated. Ms. Witana urged the board to allow petitioner to practice medicine again.

In his letter dated March 28, 2016, Dr. Patel supported petitioner's request to have his license reinstated. Dr. Patel has practiced medicine since 1985 and is board certified in gastroenterology and internal medicine. He has served as a senior member of executive committees of several hospitals and was Vice-Chairman of the Department of Medicine of Moreno Valley Hospital. Dr. Patel has known petitioner since 1995 as a colleague and valued his expertise to such an extent that petitioner was his doctor and his parents' doctor. Dr. Patel described petitioner as a very caring and dedicated doctor. He is aware of the reasons why petitioner's license was revoked, and petitioner has disclosed to him his misconduct. He stated that petitioner is remorseful for what he did, and petitioner has updated Dr. Patel on his efforts to rehabilitate himself; petitioner is very sincere, honest, and has good character; and he believes that petitioner has made a conscientious effort to improve himself. Dr. Patel further stated that he is so confident in petitioner's rehabilitation that he would be willing to hire him if his license is reinstated.

In an undated letter, Chief Abbott Saranasiri stated that as petitioner's religious mentor, petitioner confided in him his sexual misconduct and petitioner was repentant and asked for Chief Abbott Saranasiri's forgiveness. Chief Abbott Saranasiri has counseled petitioner about his conduct and will continue to do so in the future. He believes that petitioner has learned his lessons in the most painful manner, petitioner continues to be remorseful and has displayed deep insight and understanding into his behavior and compassion for L.S. Chief Abbott Saranasiri described petitioner as an honest and trustworthy person who acts with integrity and the highest moral and ethical standards. He also described petitioner as devoted to his religion and his medical profession. Chief Abbott Saranasiri added that petitioner is an asset to the community due to his compassion and skills as a doctor. Chief Abbott Saranasiri believes that petitioner is rehabilitated, and he urged the board to reinstate his license.

In addition to these comments, Chief Abbott Saranasiri identified the volunteer work petitioner has done in the community both before and after his license was revoked. This work included lectures at the temple, providing healthcare for congregants who lacked coverage, work as a major organizer of relief aid for victims of the 2004 tsunami and, in particular, relief efforts petitioner helped organize for his hometown in Sri Lanka. After he lost his license, petitioner continued to work to organize aid for victims of the tsunami. In 2015, petitioner facilitated collecting donations for victims of the earthquake in Nepal.

In a letter dated February 28, 2016, Pastor Ted Slattery stated that he and his wife have known petitioner since 1995 as petitioner's patients. He is aware of the misconduct that resulted in the loss of petitioner's license and the efforts petitioner has undertaken to rehabilitate himself. Pastor Slattery believes that petitioner has learned from his mistake and he is confident he will not engage in this behavior again. Pastor Slattery stated that petitioner is an excellent physician and compassionate person. Petitioner went out of his way to help him and his wife so that they were able to obtain every possible care and medical treatment. Pastor Slattery urged the board to reinstate petitioner's license so that the community may benefit once again from his medical skills.

In a letter dated March 18, 2016, Lilibeth Navarro, RN, stated that she is a friend of petitioner and his family. Ms. Navarro is Director of Patient Care Services for Access Home Health Care, Inc. Petitioner has helped her company get on its feet when the company was struggling. Since the loss of his license, petitioner has volunteered at her company and given lectures to administration and nursing staff on various topics, including dealing with difficult patients, decreasing patient stress, reducing stress of staff when dealing with behaviorally challenged patients, and medical bill coding. Ms. Navarro stated that she has observed petitioner improve his personality and behavior since he lost his license and become a more caring and compassionate person. Ms. Navarro stated that petitioner is remorseful for his conduct. She asked that his license be reinstated.

In a letter dated March 18, 2016, Edwin Navarro stated that petitioner is a close friend of his and his wife, and he has known petitioner for over 10 years. He is the owner and Chief Executive Officer of Access Home Health Care, Inc. Mr. Navarro is aware of petitioner's misconduct and he has seen petitioner's overall improvement to safeguard himself to ensure that he will not engage in such misconduct again. Mr. Navarro stated that petitioner is extremely kind and compassionate. Mr. Navarro also noted petitioner's volunteer work.

In a letter dated February 29, 2016, Joseph O. Nwokeabia stated that he has known petitioner since 2003. Mr. Nwokeabia owns Vision Home Health and Hospice Care, Inc., where petitioner served as Medical Director. Mr. Nwokeabia is aware of petitioner's misconduct and that petitioner is remorseful for his misconduct. He is also aware of petitioner's efforts to rehabilitate himself. Mr. Nwokeabia stated that petitioner has taken responsibility for his behavior and he believes that petitioner learned his lesson and will not engage in such misconduct again. Since petitioner lost his license he conducts lectures at Mr. Nwokeabia's facility for staff on the same topics he addressed in lectures he has given at

Access Home Health Care, Inc. Mr. Nwokeabia urged the board to reinstate petitioner's license.

The Parties' Arguments

21. Petitioner argued that his license should be reinstated because he accepted the board's key findings regarding his sexual relationship with his patient and he has progressed from the slippery slope where he lost control of himself. Since he engaged in sexual misconduct with his patient, over eight years have passed, and he has devoted himself to his rehabilitation.

Petitioner did not agree with the board's findings that he falsified medical records and did not refer L.S. to a psychiatrist. He argued that his disagreement with these findings should not be a basis to deny his petition. He argued that he testified honestly on these issues. Petitioner commented that he agreed he did something worse: he inappropriately terminated the doctor patient relationship when he sent the letter on December 14, 2009.

Petitioner accepted that if his license is reinstated that he would not have a solo practice and would undergo psychotherapy. Petitioner agreed that the board in its sole discretion may accept the PACE program's assessment of his clinical skills and his fitness to practice medicine safely, as documented in Drs. Norcross's and McDonald's reports.

The Attorney General argued that petitioner's petition should be denied because petitioner continues to be dishonest with the board about falsifying L.S.'s medical records, referring her to a psychiatrist and improperly post-dating a prescription. As a result, petitioner cannot be deemed "remotely" rehabilitated.

If petitioner's petition is granted, the Attorney General asked that petitioner be placed on a lengthy period of probation, be prohibited from seeing female patients, and undergo psychotherapy.

In reply, petitioner stated that a chaperone and requiring petitioner to undergo psychotherapy would protect the public.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding for the restoration of a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.)

Statutory and Regulatory Authority

2. Business and Professions Code section 2307 provides in part:

(a) A person whose certificate . . . has been revoked . . . may petition the board for reinstatement or modification of penalty . . .

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board . . . which shall be acted upon in accordance with Section 2335.

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . . The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary. . . .

3. California Code of Regulations, title 16, section 1359 provides:

(a) A petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division.

(b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.

4. California Code of Regulations, title 16, section 1359 states, in part:

When considering a petition for reinstatement . . . pursuant to the provisions of Section 11522 of the Government Code, the division . . . shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

(e) Evidence, if any, of rehabilitation submitted by the applicant.

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Rehabilitation

5. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of a petitioner's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

The Board's Disciplinary Guidelines

6. Protection of the public is the board's highest priority. Consistent with this duty, the board has adopted guidelines in its "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016).

The board's guidelines relating to sexual misconduct are most directly applicable to petitioner's matter. Although the board found that petitioner committed misconduct in multiple areas, including gross and repeated negligent acts, failure to maintain adequate and accurate medical records, and conviction of a substantially related crime, petitioner's misconduct arose from his inappropriate sexual relationship with L.S.

Under these guidelines, the recommended minimum penalty for sexual misconduct includes a seven year probation period, an education course, an ethics course, completion of a professional boundaries program, psychiatric evaluation, psychotherapy, practice monitoring, third party chaperone, and prohibited practice. The recommended maximum penalty is revocation.

Cause Exists to Grant Petitioner's Petition with Terms and Conditions to Ensure Public Protection

7. Petitioner practiced as a physician for 18 years before he engaged in sexual misconduct with L.S. on December 20, 2009. After his license was revoked on February 28, 2013, he struggled to come to terms with his misconduct. He blamed his former patient and was in a state of denial. Petitioner incorrectly believed that sending her a letter terminating the doctor patient relationship was the appropriate way to terminate the doctor patient relationship and, further, he appeared to not understand the harm his misconduct caused her.

Petitioner now appears to have come to terms with the extent of his misconduct, at least as it relates to his sexual relationship with L.S. He is very remorseful for his behavior, and now no longer blames her. He recognizes that he improperly terminated the patient doctor relationship with L.S. when he purportedly mailed her a letter on December 14, 2009,

and referred her to a psychiatrist that day, and his misconduct may have harmed her. As evidence of his rehabilitation, petitioner has undergone therapy, taken numerous courses relating to professional boundaries, and developed a plan to ensure that he will not cross professional boundaries again. Petitioner has also performed community service through his temple and given lectures to health care providers.

But there is reason to be concerned about petitioner's honesty and whether he is sufficiently rehabilitated. As discussed, he does not accept the board's conclusions that he falsified medical records, testified falsely that he mailed the termination letter to L.S. and referred her to a psychiatrist, and he improperly post-dated a prescription for L.S. His refusal to accept, to any degree, that he engaged in these instances of misconduct the board found, and which were well-supported, is a factor against granting his petition.

With this reservation noted, the record as a whole must be considered to assess whether petitioner is sufficiently rehabilitated that reinstating his license would be consistent with public protection. After considering the record as a whole, the credible testimony of individuals who testified on petitioner's behalf, the letters submitted on petitioner's behalf, petitioner's testimony and evidence he presented of rehabilitation, clear and convincing evidence established that petitioner is sufficiently rehabilitated to practice medicine safely, with terms and conditions to ensure public protection. To conclude otherwise would not ensure public protection, in light of this evidence, and would amount to punishment. (See *Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.) These terms and conditions shall include an extended period of probation and requirements that petitioner be required to have a chaperone present whenever he consults, treats or examines female patients. It is not necessary that petitioner be prohibited from treating female patients, as the Attorney General recommended, considering the evidence presented in this hearing and terms and conditions that will be ordered. Petitioner is also required to have a practice monitor, undergo a psychiatric examination and undergo therapy, and he is prohibited from having a solo practice. In addition, he is required to undergo an assessment of his clinical competence and fitness. In this regard, the board in its discretion may accept the PACE program's October 27, 2016, and August 13, 2016, assessments.

ORDER

The Petition to Reinstate Physician's and Surgeon's Certificate No. A 50338 issued to Sarath Chula Witana is granted. Physician's and Surgeon's Certificate No. A 50338 issued to Sarath Chula Witana is reinstated, revoked, the revocation is stayed, and the certificate placed on probation for seven (7) years on the following terms and conditions:

1. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each

year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. Professionalism Program (Ethics Courses)

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations section 1358.1. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six (6) months after petitioner's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the board or its designee had the program been taken after the effective date of this Decision.

Petitioner shall submit a certification of successful completion to the board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, petitioner shall enroll in a professional boundaries program approved in advance by the board or its designee. Petitioner, at the program's discretion, shall undergo and complete the program's assessment of petitioner's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decisions, Accusation and any other information that the board or its designee deems relevant. The program shall evaluate petitioner at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee.

Failure to complete the entire program not later than six (6) months after petitioner's initial enrollment shall constitute a violation of probation unless the board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the program shall advise the board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with program recommendations. At the completion of the program, petitioner shall submit to a final evaluation. The program shall provide the results of the evaluation to the board or its designee. The professional boundaries program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not petitioner successfully completed the program.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the board or its designee had the course been taken after the effective date of this Decision.

4. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed board certified psychiatrist, who shall consider any information provided by the board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the board or its designee.

5. Psychotherapy

Within 60 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, petitioner shall undergo and continue

psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the board or its designee. The board or its designee may require petitioner to undergo psychiatric evaluations by a board-appointed board certified psychiatrist. If, prior to the completion of probation, petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

6. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The board or its designee shall provide the approved monitor with copies of the Decisions and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decisions and Accusation and, proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decisions and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine, and whether petitioner is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within five (5) calendar days of such resignation or unavailability, submit to the board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, petitioner may participate in a professional enhancement program approved in advance by the board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at petitioner's expense during the term of probation.

7. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the petitioner's practice setting changes and the petitioner is no longer practicing in a setting in compliance with this Decision, the petitioner shall notify the board or its designee within five (5) calendar days of the practice setting

change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The petitioner shall not resume practice until an appropriate practice setting is established.

8. Third Party Chaperone

During probation, petitioner shall have a third party chaperone present while consulting, examining or treating female patients. Petitioner shall, within 30 calendar days of the effective date of the Decision, submit to the board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If petitioner fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decisions and Accusation and fully understand the role of the third party chaperone.

Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the board or its designee, and shall retain the log for the entire term of probation.

Petitioner is prohibited from terminating employment of a board-approved third party chaperone solely because that person provided information as required to the board or its designee.

If the third party chaperone resigns or is no longer available, petitioner shall, within five (5) calendar days of such resignation or unavailability, submit to the board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If petitioner fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

Petitioner shall provide written notification to petitioner's patients that a third party chaperone shall be present during all consultations, examination, or treatment with female patients. Petitioner shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the board or its designee, and shall retain the notification for the entire term of probation.

9. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical competence assessment program approved in advance by the board or its designee. In its sole discretion, the board may accept the October 27, 2016, PACE program assessment report of William Norcross, M.D. and the August 13, 2016, psychiatric fitness for duty evaluation report of Kai McDonald, M.D.

Petitioner shall successfully complete the program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of petitioner's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to petitioner's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decisions, Accusation, and any other information that the board or its designee deems relevant. The program shall require petitioner's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Petitioner shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the board or its designee which unequivocally states whether the petitioner has demonstrated the ability to practice safely and independently. Based on petitioner's performance on the clinical competence assessment, the program will advise the board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

Determination as to whether petitioner successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

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10. Notification

Petitioner shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

11. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, petitioner is prohibited from supervising physician assistants and advanced practice nurses.

12. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

13. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the board's probation unit.

Address Changes

Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the board or its designee. Under

no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Petitioner shall immediately inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

15. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice, throughout the term of probation.

16. Non-practice While on Probation

Petitioner shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. If petitioner resides in California and is considered to be in non-practice, petitioner shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice and does not relieve petitioner from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete the Federation of State Medical board's Special Purpose Examination, or, at the board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a petitioner residing outside of California, will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations.

17. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

18. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

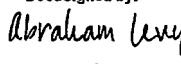
19. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

DATED: April 13, 2018

DocuSigned by:

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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings